U.S. Department of Justice

Immigration and Naturalization Service [redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC-97-227-51522 Office: Vermont Service Center Date: JUN 15 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Terrance M. O'Reilly, Director
Administrative Appeals Office

WAC 00-027-2035

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner for Examinations dismissed an appeal from the decision. The matter is again before the Associate Commissioner on motion to reopen. The prior decision dismissing the appeal will be affirmed.

The petitioner is a mosque that seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), in order to employ him as a moazzan.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The director denied the petition finding that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience. The director also found that the petitioner had failed to establish its ability to pay the proffered wage.

The Associate Commissioner, through the Director of the Administrative Appeals Office ("AAO"), held on appeal that the director's decision was correct. The AAO also found that the petitioner had failed to establish that it had made a valid job offer to the beneficiary.

On motion to reopen, the petitioner argued that the beneficiary is eligible for the benefit sought. The petitioner submitted additional tax documents.

The first issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on August 25, 1997. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from August 25, 1995 to August 25, 1997.

In its decision dated February 3, 1999, the AAO found that the beneficiary's primary occupation during the two-year qualifying period was as a self-employed vendor. The AAO further found that the beneficiary had volunteered his services at the mosque during this same time period.

On motion, the petitioner stated that the beneficiary "has always been working in association with our organization even before coming on our payroll from august, 1997. Before August 1997, he was being directly paid by different organizations." The petitioner submitted a photocopy of a 1997 Form W-2 purportedly issued by it to the beneficiary.

The statements made by the petitioner on motion are not persuasive. The petitioner had previously stated and documented the beneficiary's employment as a vendor during the qualifying period. The statements made on motion conflict with this earlier testimony. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. Matter of Izumii, Int. Dec. 3360 (Assoc. Comm., Ex., July 13, 1998). Also, the petitioner has not submitted any independent, corroborative evidence to support its revised claim that the beneficiary was "paid by

different organizations" during the qualifying period. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The 1997 Form W-2 was issued for employment that purportedly occurred subsequent to the qualifying period.

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from August 25, 1995 to August 25, 1997. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The next issue to be examined is whether the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that it would pay the beneficiary an annual salary of approximately $18,200. The AAO found that the evidence submitted by the petitioner demonstrated that it had never paid a moazzan a salary, and that of those individuals who had received compensation, none had ever been paid continuously throughout the year. On motion, the petitioner submitted photocopies of 1997 Forms W-2 made out by it to several individuals. The amount of income earned by these individuals ranged from $1,800 to $18,000. This evidence does not overcome the findings of the AAO. Accordingly, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The decision dated February 3, 1999, is affirmed. The petition is denied.